IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3048 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMANEND PRIBHDAS IIARIYANI

Versus

GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION

Appearance:

1. Special Civil Application No. 3048 of 2004

MR ZUBIN F BHARDA for Petitioner No. 1

MR MB GANDHI for Respondent No. 1-2

MR RJ GOSWAMI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: /08/2004

CAV JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the action of the respondents No. 1 and 2, Gujarat Industrial Development Corporation (hereinafter be referred to as 'GIDC') of allotting plot No. 263 situate at Vapi

Industrial Estate to the respondent No.3 and has further prayed to cancel the allotment of the said plot made in favour of respondent No.3 vide letter dated 11th February 2004 with a further prayer directing GIDC to execute the conveyance and lease deeds in favour of the petitioner for plots No. 263 and 264 along with constructed Shed No. A-2/21 type forthwith.

2. It is the case of the petitioner that by order dated 23rd October 1972 the petitioner was allotted Plot No. 264 along with constructed shed bearing No. 21 of A-2 type of Vapi Industrial Area and in the said allotment letter, the Senior Officer (Estate), Vapi, had also indicated about the allotment of plot No. 263 to the petitioner. It is the case of the petitioner that along with allotment of Shed No. 21 of A-2 type the petitioner was allotted open plots Nos. 263, 262, 270, 271 and 272, each of 2222 sq.yds. It is further the case of the petitioner that so far as other plots other than plots No. 263 and 264 and Shed No. 21 of A-2 type, the petitioner was not interested and therefore the GIDC was informed accordingly and to hand over the possession of plots No. 263 and 264 and Shed A-2/21 only. The petitioner has placed reliance upon the allotment letter dated 23rd October 972 and the further communication dated 5.5.1975 by which the petitioner was directed to pay a sum of RS. 7452 being initial payment. It is also the case of the petitioner that pursuant to the communication dated 5.5.1975 the petitioner has deposited a sum of RS. 7452 on 19.5.1975 and a receipt was also issued in favour of the petitioner in which it is specifically mentioned that the payment was made against initial payment for allotment of plot No. 263 at Vapi. It is the case of the petitioner that thereafter the petitioner has deposited the amount by way of instalments as agreed between the petitioner and GIDC and as on May 26, 1975 deposited Rs. 1,84,181 which was the payment towards plot No. 264 together with constructed shed No. A-2/21 and also for plot No. 263. Thereafter the petitioner has requested to hand over possession of plot No. 263. It is the case of the petitioner that the petitioner was directed to produce No Objection Certificate from the Deputy Engineer which the petitioner produced in the year 1990 and thereafter the petitioner requested the respondent No.2 to execute the lease and conveyance deeds for plots No. 263 and 264 along with constructed Shed No. A-2/21. It is pertinent to note that at this stage, there is no dispute with regard to plot No. 264 and constructed Shed No. A-2/21, but the dispute is with regard to plot No. 263 only. Thereafter the petitioner has served a legal notice upon the

respondents in the year 1990 and it is the petitioner's case that to his utter surprise the petitioner was informed by communication dated 7.5.1991 that the GIDC has not allotted plot No. 263 to the petitioner and has allotted only Shed No. A-2/21 situate on plot No. 264 and the petitioner was directed to remove the wire fencing which was made by the petitioner on Plot No. 263. At this stage, it is pertinent to note that plots No. 263 & 264 are adjoining to each other. The petitioner immediately replied to the GIDC by communication dated 4th June 1991 informing that in fact they are allotted plot No. 263 also in the year 1972 and the petitioner had deposited the amount of Rs. 7452 pursuant to the communication dated 5th May 1975 being initial payment towards plot No. 263. Thereafter, as the plot No. 263 is allotted/sold to the respondent No.3 herein in the year 2004 more particularly on 11th February 2004, the present Special Civil Application is filed for the aforesaid reliefs.

3. Shri Zubin Bharda, learned advocate appeared on behalf of the petitioner, Shri MB Gandhi, learned advocate appeared on behalf of GIDC and Shri RJ Goswami, learned advocate appeared on behalf of respondent No.3.

4. Shri Zubin Bharda, learned advocate appearing for the petitioner has relied upon the allotment letter dated 23rd October 1972; the letter dated 5.5.1975 directing the petitioner to pay/deposit an amount of Rs. 7452 being initial payment towards allotment of plot No. 263 at Vapi; the receipt dated 19.5.1975 in which reference is made with regard to plot No.263; the communication dated 26th May 1983 requesting the GIDC to hand over final possession of plots No. 263 and 264 and Shed No. A-2/21; the communication dated 6.11.1990; the communication dated 28th January 1991; the certificate issued by the Deputy Executive Engineer, GIDC dated 16th August 1990; the letter dated 22nd December 1990 issued by the Branch Manager, State Bank of India to Regional Manager, GIDC; and communication dated 11th January 1991 by Deputy Manager, GIDC Vapi to the Branch Manager, State Bank of India, Goregaon (E) Branch, Mumbai, in support of his case that in fact plot No. 263 is also allotted to the petitioner and relying upon the aforesaid documents the petitioner has prayed for aforesaid reliefs and has prayed for directing the respondent GIDC to hand over possession of plot No. 263 to cancel the allotment in favour of respondent No.3 with respect to plot No. 263 and to execute the deed of conveyance with regard to plots No. 263 and 164.

5. In response to the notice issued by this Court, Shri MB Gandhi, learned advocate appeared on behalf of GIDC and filed an affidavit-in-reply on behalf of GIDC. It is specifically denied that plot No. 263 si allotted to the petitioner. It is submitted that petitioner is allotted Plot No. 264 along with construction standing thereon being Shed No. A-2/21 on 23rd October 1972 and the possession was handed over to the petitioner. The deed of conveyance is also executed with regard to Plot No. 264 only and not with regard to plot No. 263 at any point of time. It is further submitted that when the Corporation directed the petitioner to pay the amount of Rs. 7452 being initial payment towards plot No.263 as if the petitioner has failed to make the payment as per the offer and having failed the allotment was made of only Shed No. A-2/21 on Plot No.264 and not of plot No. 263. It is also further submitted that the petitioner was already communicated as far back as in the year 1991 to the effect that the plot No. 263 is not allotted to the petitioner at all, still nothing was done by the petitioner and when now the plot No. 263 is allotted to respondent No.3 on 6.2.2004 the petitioner has filed the present Special Civil Application after a period of 13 years of informing the petitioner that the plot is not allotted to the petitioner. It is further submitted in the reply that it is the policy of the Corporation that after all the dues are paid then only the question of execution would arise. It is further submitted in the reply that the petitioner was communicated by letter dated 5.5.1975 that the petitioner was required to pay the remaining amount of Rs. 30293 plus interest of RS. 11,236 for plot No. 263 within 30 days from the date of receipt of such letter failing which it was stated that when the plot will be allotted to some body else. It is also submitted in the said affidavit-in-reply that the petitioner was again reminded on 18.8.1975 by RPAD letter and even then no steps were taken. Mr. MB Gandhi, learned advocate appearing on behalf of the respondent Corporation has submitted that when the petitioner was informed in the year 1991 that the petitioner was allotted plot No. 263 there is no question of executing the document and/or handing over possession and despite this no steps were taken by the petitioner thereafter and the present petition is filed after a period of 13 years which, according to him, is not entertainable more particularly when the plot in question is already allotted to the respondent No.3 and the possession is already handed over to him. He has further submitted that there is no deed of conveyance with regard to plot No. 263 but a deed of conveyance was executed with regard to plot No. 264 on 2.7.1997, still the petitioner

has not made grievance why the deed was executed with regard to plot No. 264 and not with regard to plot No. 263. According to the respondent Corporation the petitioner was not very much serious with regard to plot No. 263 and therefore requested to dismiss the present Special Civil Application.

6. In response to the affidavit-in-reply filed on behalf of Corporation, an affidavit-in-rejoinder is filed by the petitioner wherein the petitioner has relied upon his own communication dated 23rd April 1975 addressed to the GIDC as well as the Certificate issued by the Deputy Executive Engineer dated 16th August 1990 in support of his case that in fact the petitioner was allotted plot No. 263 also. Shri Gandhi, learned advocate appearing on behalf of the respondent Corporation has also relied upon the communication dated 31st May 1975 requesting the petitioner to pay the balance amount towards plot No. 263 within 3 days failing which the amount of Rs. 7452 paid by the petitioner to GIDC would be adjusted against the dues and the Corporation would allot plot No. 263 to the parties as per the waiting list. Shri Gandhi has submitted that thereafter the petitioner has not yet deposited/paid the balance amount towards plot No. 263 which the petitioner was required to make in the year 1975 and therefore his allotment is automatically cancelled and the petitioner was accordingly informed in the year 1991 itself.

7. An affidavit-in-reply is also filed on behalf of the respondent No.3-allottee who is allotted plot No. 263 in the month of February 2004 in which it is stated that they are allotted plot No. 263 and the possession is already handed over to them. Therefore according to him the petitioner is not entitled to any relief who has now prayed for to allot and hand over possession of plot No. 263 which is already allotted to him.

8. Heard the learned advocates for the parties. From the record, it seems that by allotment letter dated 23rd October 1972 the petitioner was allotted plot No. 264 with Shed No. A-2/21 and other plots bearing No. 263, 270, 271, 272 and 262 each of the area of 2222 sq.yds. As it was not possible for the petitioner to pay the amount towards the aforesaid plots a request was made immediately that they will be interested only in plot No. 264 and Shed No. A-2/21 and plot No. 263 and they will forgo their rights with regard to rest of the plots. Possession of plot No. 264 was handed over to the petitioner along with Shed No. 21 of A-2 type immediately. Pursuant to the correspondence of 1975 the

petitioner was directed to make initial payment towards plot No. 263 vide communication dated 5.5.1975 and the petitioner deposited/paid the amount of Rs. 7452 being initial payment towards plot No. 263. Thus, one thing is clear that till 1975 the petitioner had not made any payment towards plot No. 263 and even initial payment was also not made. By communication dated 30.5.1975 the petitioner was directed to make payment of Rs. 30,293 towards the balance amount with plot No. 263 within 3 days failing which the Corporation would be constrained to adjust the said amount against the dues and allot plot No. 263 to the parties on the waiting list and still no efforts were made by the petitioner to make payment of balance amount towards plot No. 263. Thereafter, it seems that the petitioner has served a legal notice upon the Corporation through his Advocate on 19th April 1991 with regard to allotment of plot No. 263 and the petitioner was informed by the Corporation on 7th May 1991 to the effect that the GIDC has not allotted plot No. 263 and is allotted only Shed No. 21 of A-2 type situate on plot No. 264. Not only that, but even in the year 1994 also by communication dated 4th February 1994 the petitioner was directed to remove the wire-fencing and to remove the encroachment which was made by the petitioner on plot No. 263. Still, the petitioner did not do anything. From the aforesaid fact, it is clear that though the petitioner was informed as far back as in the year 1991 itself the petitioner is not allotted plot No. 263 but is allotted only A-2/21 type shed situate on plot No. 263 and inspite of this no efforts were made by the petitioner thereafter nor the petitioner challenged the same by filing any petition with the prayers which are now sought for in the present petition. Even thereafter the deed of conveyance which was executed on 2.7.1997 was only with regard to plot No. 264, still the petitioner did not do anything and no efforts were made by the petitioner to get the deed of conveyance executed with regard to plot No. 263 and now when the plot is already allotted to the respondent No.3 on 11th February 2004 and the possession is handed over to the respondent No.3, the present Special Civil Application is filed with the aforesaid prayers which cannot be entertained, after a period of 13 years of informing the petitioner to the effect that the plot No. 263 is not allotted to the petitioner. This petition is required to be dismissed on the ground of delay and latches and acquiescence and more particularly in view of the fact that now the plot No. 263 is already allotted to respondent No.3 on 11th February 2004. Even otherwise, there are disputed questions of facts which cannot be decided in the petition under Article 226 of the Constitution of India.

The petition filed by the petitioner for the prayers which are sought for in the present Special Civil Application is hopelessly time barred.

9. For all the aforesaid reasons and circumstances of the case, the petitioner is not entitled to any of the reliefs which are sought for in the present Special Civil Application. The present Special Civil Application is, therefore, required to be dismissed and is hereby dismissed. Notice is discharged.

[M.R. Shah, J.]

rmr.

At this stage, Shri Zubin Bharda, learned advocate appearing for the petitioner, requests to extend the ad-interim relief granted earlier. From the record it seems that the ad-interim relief granted earlier is not extended after 30-06-2004. Hence, there is no question of continuation of interim relief. The prayer is rejected.

[M.R. Shah, J.]